

Appln No. 10/087,247

Amdt date November 25, 2003

Reply to Office action of August 25, 2003

REMARKS/ARGUMENTS

Claims 1 to 13, as amended, are pending. Applicants have amended claims 6, 12 and 13 as requested by the examiner in the Office action dated August 25, 2003, thereby overcoming the examiner's objections to those claims.

In the Office action, while claims 2 to 10, 12 and 13 were deemed allowable, the examiner rejected claims 1 and 11 under 35 U.S.C. § 102(e) as allegedly anticipated by Matsubara et al. (U.S. Patent No. 6,589,696) or in the alternative, under 35 U.S.C. § 103 (a) as allegedly obvious over Matsubara et al. further evidenced by Fujimoto et al. and Kojima et al. Applicants traverse the rejection of claims 1 and 11.

Independent claim 1 is directed to a carbonaceous material comprising "a graphite particle," "a complex particle disposed and distributed in the vicinity of the surface of the graphite particle," and "an amorphous carbon layer." The complex particle is further defined as comprising

"a Si particulate, a conductive carbon material disposed and distributed in the vicinity of the surface of the Si particulate, and a rigid carbon material layer coated on the Si particulate and the conductive carbon material rendering them bound, the Si particulate being composed of a crystalline Si phase."

In contrast, Matsubara et al., for example, referring to Fig. 3, discloses a material with "silicon micro-particles 22 attached on the surface of a plurality of graphite particles 21, and the

Appln No. 10/087,247

Amdt date November 25, 2003

Reply to Office action of August 25, 2003

carbon film 23 which coats partially or totally the graphite particles." (Column 5, lines 19 to 24.) Nowhere does Matsubara teach or suggest a complex particle of a crystalline Si phase upon which "a conductive carbon material [is] disposed and distributed," with "a rigid carbon material layer coated on the Si particulate and the conductive carbon material rendering them bound." Therefore, claim 1 is not anticipated by Matsubara et al. and applicants request that this basis for rejection be withdrawn.

Regarding the alternative basis for rejecting claim 1 as obvious in view of Matsubara et al. and other cited references, Matsubara et al. are cited under Section 102(e) as their filing date precedes the latest of the priority dates claimed in the present application, yet that application did not issue until after the latest priority date. Applicants wish to point out that the Matsubara et al. patent is owned by Samsung SDI Co, Ltd., and furthermore, that the present invention was made subject to an obligation of assignment to Samsung SDI Co, Ltd., and has been so assigned. Consequently, under the provisions of 35 U.S.C. § 103(c), Matsubara et al. cannot be considered prior art under Section 103(a). Therefore, claim 1 is allowable.

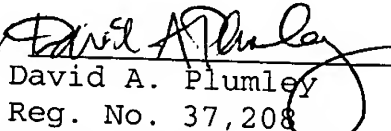
Regarding claim 11, this claim is directed to: "A lithium secondary battery comprising the carbonaceous material according to claim 1." This claim is allowable for the same reasons as claim 1.

Claims 1 to 13 remain in this application. Based on the above remarks, applicants submit that the claims are in condition for allowance and favorable action is requested.

Appln No. 10/087,247  
Amdt date November 25, 2003  
Reply to Office action of August 25, 2003

However, if there are any remaining issues that can best be addressed by telephone, the examiner is asked to contact applicants' attorney at the number below.

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

By   
David A. Plumley  
Reg. No. 37,208  
626/795-9900

DAP/cam  
MEE PAS538195.1-\*--11/25/03 1:29 PM